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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

HOLLY GRAMMATICO,) Case No.: '14CV2406 GPC RBB
Plaintiff,)
v.) COMPLAINT FOR DAMAGES
MIDLAND FUNDING, LLC,) 1. VIOLATION OF THE FAIR
MIDLAND CREDIT) DEBT COLLECTION PRACTICES
MANAGEMENT, INC; and) ACT, 15 U.S.C. §1692 ET. SEQ.
ENCORE CAPITAL GROUP, INC.,) JURY TRIAL DEMANDED
Defendants.)

COMPLAINT AND DEMAND FOR JURY TRIAL

HOLLY GRAMMATICO (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against MIDLAND FUNDING, LLC (“Midland”), MIDLAND CREDIT MANAGEMENT, INC. (“MCM”); and ENCORE CAPITAL GROUP, INC. (“Encore”):

1 **INTRODUCTION**

2 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices
3 Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

5 **JURISDICTION AND VENUE**

6 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),
7 which states that such actions may be brought and heard before "any appropriate
8 United States district court without regard to the amount in controversy," and 28
9 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
10 under the laws of the United States.

11 3. Defendants conduct business in the State of Colorado, and as such,
12 personal jurisdiction is established.

13 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

14 **PARTIES**

15 5. Plaintiff is a natural person residing in Colorado Springs, Colorado
16 80910.

17 6. Plaintiff is a "consumer" as that term is defined by 15 U.S.C.
18 §1692a(3).

19 7. In the alternative, Plaintiff is a person granted a cause of action under
20 the FDCPA. See 15 U.S.C. §1692k(a) and Wenrich v. Cole, 2000 U.S. Dist
21 LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant MCM is a debt collection company with its headquarters located at 8875 Aero Drive, San Diego, California 92123.

9. Defendant Midland is a debt collection company with its headquarters located at 8875 Aero Drive, San Diego, California 92123.

10. Defendant Encore is a corporation specializing in debt collection with its principal place of business located at 8875 Aero Drive, San Diego, California, 92123.

11. Defendants are “debt collectors” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

12. Defendants acted through their agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

13. At all relevant times, Defendants contacted Plaintiff in their attempts to collect a consumer debt.

14. Upon information and belief, the alleged debt arose out of transactions which were for personal, family, or household purposes.

15. Beginning in or around June 2014, Defendants' collectors repeatedly and continuously contacted Plaintiff on her cellular telephone in their attempts to collect the alleged consumer debt.

1 16. Defendants' calls originated from numbers including 877-411-5551,
2 which the undersigned has confirmed belongs to Defendant MCM.
3

4 17. Defendants called Plaintiff, on average, between two (2) and three (3)
5 times per day in their attempts to collect the alleged debt.
6

7 18. Frustrated by the continuous and repetitive collection calls, Plaintiff
8 told Defendants' collectors that she wanted their calls to cease.
9

10 19. Plaintiff reiterated this request on June 29, 2014, and in response
11 Defendants' collector hung up on Plaintiff.
12

13 20. Additionally, in her desire to stop Defendants' repetitive phone calls,
14 Plaintiff would answer Defendants' calls and immediately hang up, signaling that
15 its calls were unwanted.
16

17 21. However, Defendants continued calling Plaintiff.
18

19 22. Once Defendants was told the calls were unwanted and to stop, there
20 was no lawful purpose to making further calls, nor was there any good faith reason
21 to place calls.
22

23 23. Finally, within five (5) days of its initial communication with
24 Plaintiff, Defendants failed to send Plaintiff written notice setting forth her rights
25 to dispute the debt and/or seek verification of the debt pursuant to the FDCPA.
26

27 24. Defendants' actions as described herein were taken with the intent to
28 harass, frustrate and coerce payment from Plaintiff.
29

DEFENDANTS VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

COUNT I

25. Defendants' conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §§ 1692d, and 1692d(5).

- a. A debt collector violates § 1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.
- b. A debt collector violates § 1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- c. Defendants violated 15 U.S.C. §§ 1692d, and 1692d(5) of the FDCPA when it called Plaintiff on her cellular telephone, continuously and repeatedly, between two (2) and three (3) times per day; and continuing to call Plaintiff after she hung up on their collectors, with the intent to annoy and harass her.

COUNT II

26. Defendants' conduct, as detailed in the preceding paragraphs, violated
15 U.S.C. § 1692f.

- 1 a. A debt collector violates § 1692f of the FDCPA by using
2 unfair or unconscionable means to collect or attempt to collect
3 any debt.
- 4 b. Here, Defendants violated 15 U.S.C. § 1692f of the FDCPA
5 by failing to update their records to reflect that Plaintiff
6 demanded that their calls cease.

10

11 **COUNT III**

12 27. Defendants' conduct, as detailed in the preceding paragraphs, violated
13
14 15 U.S.C. § 1692g.

- 15 a. A debt collector violates § 1692g(a) of the FDCPA by failing
16 to send to the consumer, within five days after its initial
17 communication with a consumer in connection with the
18 collection of a debt, a written notice containing: (1) the
19 amount of the debt; (2) the name of the creditor to whom the
20 debt is owed; (3) a statement that unless the consumer, within
21 thirty days after receipt of the notice, disputes the validity of
22 the debt, or any portion thereof, the debt will be assumed to be
23 valid by the debt collector; (4) a statement that if the
24 consumer notifies the debt collector in writing within the
25
26
27
28

thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

b. Here, Defendants violated § 1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt or providing him with the name of the original creditor and the amount of the debt.

WHEREFORE, Plaintiff, HOLLY GRAMMATICO, respectfully prays for a judgment as follows:

a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);

- 1 b. Statutory damages of \$1,000.00 for the violation of the FDCPA
- 2 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 3
- 4 c. All reasonable attorneys' fees, witness fees, court costs and
- 5 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.
- 6 § 1693k(a)(3); and
- 7
- 8 d. Any other relief deemed appropriate by this Honorable Court.
- 9
- 10

DEMAND FOR JURY TRIAL

12 PLEASE TAKE NOTICE that Plaintiff, HOLLY GRAMMATICO,
13 demands a jury trial in this case.

16 RESPECTFULLY SUBMITTED,

18 DATED: 10/9/2014

KIMMEL & SILVERMAN, P.C.

19 By: /s/ Amy L. Bennecoff

20 Amy L. Bennecoff (275805)

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25 Attorney for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

HOLLY GRAMMATICO

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Amy L. Bennecoff, Esq., Kimmel & Silverman, P.C.
30 East Butler Pike, Ambler, PA 19002
(215) 540-8888

DEFENDANTS

MIDLAND FUNDING, LLC, MIDLAND CREDIT MANAGEMENT, INC; and ENCORE CAPITAL GROUP, INC.

County of Residence of First Listed Defendant San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'14CV2406 GPC RBB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	LABOR	<input checked="" type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL PROPERTY	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	FEDERAL TAX SUITS	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. 1692k**VI. CAUSE OF ACTION**Brief description of cause:
Fair Debt Collection Practices Act**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/09/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ Amy L. Bennecoff

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE